

PART 713—PRODUCTION OF NON-PUBLIC RECORDS AND TESTIMONY OF OPIC EMPLOYEES IN LEGAL PROCEEDINGS

Sec.

713.1 What does this part prohibit?

713.2 When does this part apply?

713.3 How do I request nonpublic records or testimony?

713.4 What must my written request contain?

713.5 When should I make my request?

713.6 Where should I send my request?

713.7 What will OPIC do with my request?

713.8 If my request is granted, what fees apply?

713.9 If my request is granted, what restrictions may apply?

713.10 Definitions.

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 702; 18 U.S.C. 207; 18 U.S.C. 641; 22 U.S.C. 2199(d); 28 U.S.C. 1821.

SOURCE: 64 FR 8241, Feb. 19, 1999, unless otherwise noted.

§ 713.1 What does this part prohibit?

This part prohibits the release of nonpublic records for legal proceedings or the appearance of an OPIC employee to testify in legal proceedings except as provided in this part. Any person possessing nonpublic records may release them or permit their disclosure or release only as provided in this part.

(a) *Duty of OPIC employees.* (1) If you are an OPIC employee and you are served with a subpoena requiring you to appear as a witness or to produce records, you must promptly notify the Vice-president/General Counsel in the Department of Legal Affairs. The Vice-President/General Counsel has the authority to instruct OPIC employees to refuse to appear as a witness or to withhold nonpublic records. The Vice-President/General Counsel may let an OPIC employee provide testimony, including expert or opinion testimony, if the Vice-President/General Counsel determines that the need for the testimony clearly outweighs contrary considerations.

(2) If a court or other appropriate authority orders or demands from you expert or opinion testimony or testimony beyond authorized subjects contrary to the Vice-President/General Counsel's instructions, you must immediately notify the Vice-President/General

Counsel of the order and then respectfully decline to comply with the order. You must decline to answer questions on the grounds that this part forbids such disclosure. You should produce a copy of this part, request an opportunity to consult with the Vice-President/General Counsel, and explain that providing such testimony without approval may expose you to disciplinary or other adverse action.

(b) *Duty of persons who are not OPIC employees.* (1) If you are not an OPIC employee but have custody of nonpublic records, as defined at § 713.10, and you are served with a subpoena requiring you to produce records or to testify as a witness, you must promptly notify OPIC of the subpoena. Also, you must notify the issuing court or authority and the person or entity for whom the subpoena was issued of the contents of this part. Provide notice to OPIC by sending a copy of the subpoena to the Vice-President/General Counsel, OPIC, 1100 New York Avenue, NW, Washington, DC 20527. After reviewing notice, OPIC may advise the issuing court or authority and the person or entity for whom the subpoena was issued that this part applies and, in addition, may intervene, attempt to have the subpoena quashed or withdrawn, or register appropriate objections.

(2) After you notify the Vice-President/General Counsel of the subpoena, respond to the subpoena by appearing at the time and place stated in the subpoena, unless otherwise directed by the Vice President/General Counsel. Unless otherwise authorized by the Vice-President/General Counsel, decline to produce any records or give any testimony, basing your refusal on this part. If the issuing court or authority orders the disclosure of records or orders you to testify, decline to produce records or testify and advise the Vice-President/General Counsel.

(c) *Penalties.* Anyone who discloses nonpublic records or gives testimony related to those records, except as expressly authorized by OPIC or as ordered by a federal court after OPIC has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Also, former OPIC employees, in addition to

the prohibition contained in this part, are subject to the restrictions and penalties of 18 U.S.C. 207.

§ 713.2 When does this part apply?

This part applies if you want to obtain nonpublic records or testimony of an OPIC employee for a legal proceeding. It does not apply to records that OPIC is required to release, or of which OPIC makes discretionary release, under the Freedom of Information Act (FOIA), records that OPIC releases to federal or state investigatory agencies, records that OPIC is required to release pursuant to the Privacy Act, 5 U.S.C. 552a, or records that OPIC releases under any other applicable authority.

§ 713.3 How do I request nonpublic records or testimony?

To request nonpublic records or the testimony of an OPIC employee, you must submit a written request to the Vice-President/General Counsel of OPIC. If you serve a subpoena on OPIC or an OPIC employee before submitting a written request and receiving a final determination, OPIC will oppose the subpoena on the grounds that you failed to follow the requirements of this part. You may serve a subpoena as long as it is accompanied by a written request that complies with this part.

§ 713.4 What must my written request contain?

Your written request for records or testimony must include:

- (a) The caption of the legal proceeding, docket number, and name of the court or other authority involved.
- (b) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance.
- (c) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought.
- (d) A statement as to how the need for the information outweighs the need to maintain the confidentiality of the information and outweighs the burden

on OPIC to produce the records or provide testimony.

(e) A statement indicating that the information sought is not available from another source, such as the requestor's own books and records, other persons or entities, or the testimony of someone other than an OPIC employee, such as retained experts.

(f) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the records or testimony you want.

(g) The name, address, and telephone number of counsel to each party in the case.

(h) An estimate of the amount of time you anticipate that you and other parties will need with each OPIC employee for interviews, depositions, and/or testimony.

§ 713.5 When should I make my request?

Submit your request at least 45 days before the date you need the records or testimony. If you want your request processed in a shorter time, you must explain why you could not submit the request earlier and why you need such expedited processing. If you are requesting the testimony of an OPIC employee, OPIC expects you to anticipate your need for the testimony in sufficient time to obtain it by deposition. The Vice-President/General Counsel may well deny a request for testimony at a legal proceeding unless you explain why you could not have used deposition testimony instead. The Vice-President/General Counsel will determine the location of a deposition, taking into consideration OPIC's interest in minimizing the disruption for an OPIC employee's work schedule and the costs and convenience of other persons attending the deposition.

§ 713.6 Where should I send my request?

Send your request or subpoena for records or testimony to the attention of the Vice-President/General Counsel, OPIC, 1100 New York Avenue NW, Washington, DC 20527.